IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12199 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL SAMAD ABDUL HAMID SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12199 of 2002

MS KRISHNA U MISHRA for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/04/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 4.9.2002 passed against him by the Commissioner of Police, Surat City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The detenu has been branded as "bootlegger" as defined under Sec.2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in solitary offence registered against the petitioner detenu on 29.8.2002 being DCB Police Station CR III. No.5529/2002 for the offences punishable under Sections 66(1)(B), 65AE, 116 and 81 of the Bombay Prohibition Act. In the said offence Indian Made Foreign Liquor worth Rs.48,000/ was recovered and seized.

3. It is submitted by ld. counsel Ms.K.U.Mishra that the order of detention is bad-in-law. Though the legality and validity of the order is challenged on number of grounds, but it is submitted that the detaining authority has passed the order placing reliance on the registration of the solitary offence under the Bombay Prohibition Act. That subjective satisfaction recorded by the authority that the activities of the petitioner affects the "public order" is not genuine and well founded and the same is neither legal nor logical. According to Ms. Mishra, the petitioner is involved in only one case under the Bombay Prohibition Act and according to him, total four accused were arrested in connection with the very same offence by DCB police on the receipt of information. Two vehicles were intercepted by police and Indian Made Foreign Liquor worth Rs.48,000/ was recovered and seized. It is submitted that for this solitary wrong, petitioner could not have been branded as "bootlegger" within the meaning of Sec.2(b) of the PASA Act. Even if for the sake of arguments it is accepted that the petitioner detenu is involved in the alleged offence, even than the activities of the petitioner would not fall within the category which can be said to be prejudicial and adverse to "public order". At the most, the said act can be said to be affecting the "law & order" and cannot be said tobe an act which goes to the root of "maintenance of public order". It is further submitted that in this legal back ground, if statements recorded by the sponsoring authority and verified by the detaining authority of two unnamed witnesses are considered, they also would lead to a conclusion that narration of the story by these two witnesses only tells about violation of law qua each witness on that given date and time. Non-registration of

criminal offence or even chapter case for the alleged act committed by those two unnamed witnesses, does not inspire any confidence.

4. As against that, it is submitted by ld. AGP that the statements of he unnamed witnesses are recorded and are also verified by the authority concerned. He has further submitted that merely because the offence is solitary one, the order of detention should not be quashed. The Court is supposed to consider the magnitude and gravity of the offence.

5. In the instant case, it seems that on 28.8.2002, all the four accused were apprehended and arrested and thereafter on 30.8.2002 statement of last witness was recorded by the Investigating Officer. It is apparent from the papers of chargesheet supplied to the detenu that some further statements were recorded on 31.8.2002 and on that very day, statement of 1st unnamed witness has been recorded. Statement of another unnamed witness has been recorded on 31.8.2002 and on 4.9.2002, the order of detention has been passed when all the four accused were apprehended by the police and were in judicial custody. When the petitioner was in judicial custody and when it is not even mentioned in the grounds of detention that the petitioner had applied for bail, on hypothesis and in haste, harsh order of detention is passed. Hence, the order is found not sustainable.

6. So far as the first point raised by ld. counsel Ms Mishra is concerned, the subjective satisfaction recorded by the authority says that the activities of the petitioner affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. Ms Mishra has taken this Court through the grounds of detention and relevant record available and has submitted that in the case of similar set of facts, this Court (Coram: A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in absence of any other relevant and cogent set of facts and such set of facts credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material wherein also there is nothing to indicate any disturbance to the "public order". So, mere registration of criminal

offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority to pass such order affecting adversely to the personal liberty.

7. That one co-accused Amrutbhai Jinabhai Halpati also came tobe detained vide order of detention dated 4.9.2002. He also preferred writ petition being Spl.C.A. No. 11952/2002 challenging the legality and validity of the order of detention and this Court quashed the same vide oral judgment dated 2.4.2003. The present petitioner is also similarly situated and no stronger or better case emerges against the present petitioner from the record available. So, on the ground of parity also, the order of detention passed against the present petitioner detenu also requires to be quashed and set aside.

8. No other points are raised.

9. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 04.09.2002 passed by the Commissioner of Police, Surat City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

2-04-2003 [C. K.BUCH, J]
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